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JGJr.:08-02

Paper 7

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SEP 30 2002

OFFICE OF PETITIONS

In re Application of :
Chen, et al : DECISION ON PETITION
Application No. 10/021,891 :
Filed: 13 December, 2001 :
Attorney Docket No. CHEN0145 :

This is a decision on the petition under ¶(a) of 37 C.F.R. §1.47,¹ filed on 11 September, 2002.

NOTE: Office records--including Petitioner's application papers--reflect a filing date of 13 December, 2001.

Petitioner's subsequent filings, save for the IDS filed 16 April, 2002, reflect an incorrect filing date of 12 December, 2001.

Petitioner has shown that, while all other inventors have signed the oath/declaration, the non-signing inventor **Brian D. Wilkerson (Mr. Wilkerson)** has refused or otherwise failed to join in the filing of the above-identified application after having been presented with the application papers.

¹ The regulations at 37 C.F.R. §1.47 provide:

§1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in §1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

(b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in §1.17(h), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

(c) The Office will send notice of the filing of the application to all inventors who have not joined in the application at the address(es) provided in the petition under this section, and publish notice of the filing of the application in the *Official Gazette*. The Office may dispense with this notice provision in a continuation or divisional application, if notice regarding the filing of the prior application was given to the nonsigning inventor(s). [47 Fed. Reg. 41275, Sept. 17, 1982, effective Oct. 1, 1982; 48 Fed. Reg. 2709, Jan. 20, 1983, effective Feb. 27, 1983; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997; revised, 65 Fed. Reg. 54604, Sept. 8, 2000, effective Nov. 7, 2000]

Specifically, the declaration/statement/submission of facts of/by Ronald M. Anderson (Reg. No. 28,829) and Davina Childs (Reg. No. 47,485) establish that the non-signing inventor was mailed the application papers, including the specification, claims and drawings, but failed to respond positively to the request that he sign the declaration or in fact sign said declaration.

Lastly, Petitioner has submitted a declaration in compliance with 37 C.F.R. §1.63 and §1.64 and petitioner has shown that such action is necessary to prevent irreparable damage.

This application and papers have been reviewed and found in compliance with 37 C.F.R. §1.47(a).

This application hereby is **ACCORDED status under 37 C.F.R. §1.47(a).**²

As provided under 37 C.F.R. §1.47(a), the Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition.

Notice of the filing of this application also will be published in the Official Gazette.

This file is being forwarded to OIPE for processing consistent with this decision, and then will be forwarded for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



John J. Gillon, Jr.
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

² Pursuant to Petitioner's authorization, the petition fee herein (\$130.00) is charged to Deposit Account 01-1940. (The fee for the petition filed on 11 September, 2002, was not previously paid.)